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# A CANDID
# EXAMINATION
## OF THE
## RESOLUTIONS and SENTENCE
## OF THE
# COURT-MARTIAL
## On the TRIAL of
# ADMIRAL *BYNG*;

As founded on the Principles of *Law*, *Evidence*, and *Discipline*.

In a Letter to the Gentlemen of the NAVY.

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*Summum Jus, Summa Injuria.* CICERO.

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*By an* OLD SEA OFFICER.

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# A CANDID

# EXAMINATION, &c.

GENTLEMEN,

I Am an *old Officer*, having ſerved upwards of forty Years in the Navy; but how many *ſuch* there are like to be for the future, a *late Sentence* may ſerve to determine; ſince, whoever ſhall be lucky enough to eſcape the Broadſides of the Enemy, muſt now, according to the modern Interpretation of *our Law*, be expoſed to a ſtill more dangerous Artillery; inſomuch, that a violent Death, either *abroad* or at *home*, ſeems to be the only melancholy Alter-

native left thoſe, who ſhall be raſh enough to enter, or continue in a Service, which has no other Rewards than Loſs of Life and Loſs of Honour to recommend it: Since mere *Accuſation*, if but prudently founded on the 12th Article of War, is ſufficient to inſure *Execution*.

I remember, that Court-Martials in my younger Days were held to be Courts of *Honour* and *Conſcience*; and, by theſe Rules only, was the Conduct of our Commanders to be tried.—Our *naval Judges* were then indeed unſkilled in the Niceties of *Special Pleading*, and were determined rather by the plain Merits of the Caſe, than the dubious Phraſeology of the Statute; if the Party appeared innocent in point of Fact, they never dreamt of pronouncing him guilty in point of Law; and could not reconcile to themſelves, the injurious Abſurdity of inflicting the Penalty of *Guilt* upon *Innocence*, becauſe the inexplicit Penning of an Article might ſeem to render both equally obnoxious to it.—If Neceſſity required ſome Latitude to be taken, they thought themſelves at liberty, rather to make free with the Letter of the Law, than the Life of the Subject; eſpecially, where the rigid Interpretation of the former muſt include a kind of legal Murder, with reſpect to the latter.—Hence, all Apologies for the *Sake of their own Conſciences*, and Remonſtrances of *Injuſtice done the Priſoner*, were, at that Time both unneceſſary and unknown; nor were they held to

be

be leſs *conſcientious* Judges, for not being more *ſcrupulous* Lawyers.

I little thought of living to ſee the Day, when *Omniſcience* ſhould be expected as a neceſſary Qualification in a *Sea-Officer*; neceſſary, not only to the Security of his Fortune and Reputation; but even of his Life itſelf; for if *Error* in *Judgment* is to be held capital, I may venture to affirm, that few Officers will be able long to outlive the Date of their Commiſſions; unleſs *Infallibility* could be communicated with their *Inſtructions*; a Preſervative I would have recommended to the previous Conſideration of thoſe who have ſo lately ſubmitted their Conſciences to the Yoke of ſo depopulating a Doctrine.

However, it muſt be confeſſed, this modern Doctrine of *murdering* for *Miſtake*, may poſſibly be attended with one Advantage at leaſt; for as it is probable, no naval Commander can ſurvive more than one Expedition, the great Expence of *Superanuation* will thereby be ſaved to the Government; and, indeed, the annual Supplies for the Service of the Navy in a great Meaſure annihilated, from the Scarcity of Officers that will be found ſo prodigal of their Life and Honour, as to engage in a Service rendered ſo unavoidably deſtructive to both.

You will eaſily perceive, that theſe Reflections proceed from the Determination of a *late*

*Court-Martial*; a Determination, which has not only alarmed the Public in general, but laid the very Judges themſelves under the inconſiſtent Neceſſity of diſclaiming the Equity of their own Sentence; and imploring, for *the Sake of their own Conſciences*, as well as in *Juſtice to the Priſoner*, that the very Execution may be averted, which their own Reſolutions had authorized.—Strange Paradox of naval Judicature!

But, it ſeems thoſe Gentlemen were betrayed into this Violence on their Conſcience, by the limited Reſtriction of the Word NEGLIGENCE in the 12th Article of War; yet how is it poſſible the Penalty of *Negligence* ſhould affect *Error* in *Judgment* (the only Point pretended to be proved in this Caſe); are theſe by any Conſtruction to be made ſynonimous Terms, or can *wilful Omiſſion* and *miſtaken Apprehenſion* include the ſame Idea, or deſerve the ſame Puniſhment.—If then, by the whole Tenor of the Evidence, as well as by the very Reſolutions of the Court themſelves, it appears, that MR. BYNG could only have erred in point of Judgment; by what Rule in *Law*, *Equity*, or *Grammar*, his Judges could think themſelves obliged to find him guilty under the penal Article of *Negligence*, I am not learned enough to diſcover.

Yet, ſurely theſe literal Interpreters of our martial Statutes, who think themſelves bound

to

to ſo critical an Obſervance of the *mere Word*, ought at leaſt to be as critically exact, in not miſtaking the Meaning of *it*—Had this been the Caſe, I may, without any Offence, ſuppoſe, that *erroneous Judgment* would never have been held, to fall within the Intendment of *penal Negligence*, and that conſequently MR. BYNG's Condemnation ſeems to be as little conſonant to the *Letter* of the *Law*, as it ſeems to have been to the *Conſcience* of the *Court*.

After the whole Art of *State-Necromancy* had been exhauſted, in conjuring up alarming Spectres of *Cowardice*, *Treachery*, and *Treaſon*, to ſee them all vaniſh at laſt, in a *diſputable Point of Diſcipline* only, muſt afford Matter of Amazement; but to ſee theſe very tricking Magicians ſtill triumph, in having impoſed on the Credulous, and ſecured their *deſtined Prey* in the word-catching Spell of a *legal Quibble*, cannot fail of exciting, at once, the Pity, and Indignation of a deluded People.

A Law, when either artfully or inadvertently penned, may become a Snare to the Innocent; and I have been informed, that this very Word *Negligence*, when debated in Parliament, was propoſed to be entirely left out of the Article, as being of no Significance; but what Uſe might on a proper Occaſion be made of it, thoſe beſt foreſaw, who were ſo ſtrenuous for its ſtanding as a Part of the Law, under a Pretence, that it could

could never be conſtrued in any other Senſe, than ſuch a Neglect as *implied* either *Cowardice* or *Diſaffection*—How miſtaken theſe Gentlemen were in their Opinion, or how ſucceſsful in their Policy, Experience has now evinced; ſince we find Bravery and Loyalty are by no means ſufficient Securities for the Life and Honour of an Officer, when any political Intereſts come in Competition with them.—How then is the Penetration, and public Virtue of that noble Earl to be admired, who ſo remarkably diſtinguiſhed himſelf by his Zeal and Abilities, in oppoſing this Article, as it now ſtands; and have we not reaſon to think him almoſt endued with a Spirit of Prophecy, when he declared it to be *written with a Pen dipped in Blood.*

Not to be wiſer than Providence has ordained, nay, not to think in the ſame Manner with the Court that tries you, has now the Sanction of Precedent to inflict the moſt capital of all Puniſhments; and yet, whether the Admiral's Judgment, or that of the Court, in this Caſe, partakes moſt of Error, may ſtill be a Matter of Speculation, and which the following candid Examination of the Reſolutions, on which the Sentence is founded, is meant to elucidate.

Thus far, I will preſume to ſay, that let the Queſtion be put——*Whether they thought, that*

*Mr.*

*Mr.* BYNG, *throughout the whole Expedition, acted according to the beſt of his Judgment*—— perſuaded I am, every Individual of his Judges would anſwer in the Affirmative; and yet incredible to tell,——the Naval Law, it ſeems, denounces *Death* for it.——Had not the Admiral acted according to the Dictates of his Judgment, he muſt have ſtood condemned by *Himſelf*; having done it, he now ſtands condemned by his *Country*——Hard Alternative! that includes either Forfeiture of Life, or Violation of Conſcience.

But upon this modern Principle of condemning for *Points* of *Judgment*, let us ſuppoſe Mr. BYNG to have judged differently from what he did, and acted accordingly; Might not the Court have done the like, by which means, 'tis poſſible, he might have been convicted for *doing* thoſe very Things which he is now doomed to Death for having left *undone*; ſo that a mere Similitude of Thinking, between the Judges and the Priſoner, is to be the only precarious Standard of Juſtification.

It may not be improper to obſerve, that the 12th Article of War, after the Words—*or ſhall not do his Utmoſt to take or deſtroy every Ship*—adds—*which it ſhall be his* DUTY *to engage*, &c. —— Do not theſe latter Words imply a Reference to the *Diſcretion*, as well as an Injunction on the *Valour*, of the Commander?

Muſt

Muſt not his own Ideas of Prudence and Diſcipline, in many Circumſtances, determine that *Duty?* And, though theſe ſhould apparently proceed neither from *Cowardice*, *Negligence*, or *Diſaffection*, yet, unluckily, differ from thoſe entertained by his Judges on the Occaſion—Shall this alone be ſufficient Cauſe of Condemnation? As well may a Priſoner ſuffer Death for varying in point of *Feature* from the Preſident.

The following Remarks on the Reſolutions themſelves, compared with the *Evidence* given on the Trial, will beſt ſerve to juſtify theſe Obſervations, and diſcover

*Firſt*, Whether the Facts preſumed againſt the Admiral, can, by any proper *legal* Conſtruction, fall within the Deſcription of the Word NEGLIGENCE?

*Secondly*, Whether if they proceeded from *Error* in *Judgment* only, it ought not rather to be imputed to the Lot of human *Frailty*, than *Guilt?*

*Thirdly*, Whether even any *erroneous Judgment* or *criminal Behaviour*, throughout the whole Courſe of the Expedition, can, with any Propriety or Juſtice, be inferred againſt the Commander *at all?*

RESO-

# RESOLUTIONS.

## I.

*Unanimouſly.* IT does not appear, that any unneceſſary Delay was made by Admiral *Byng*, in the Proceedings of the Squadron under his Command, from the Time of their ſailing from St. *Hellens*, on the 6th of *April*, to the Time of their Arrival off *Minorca* on the 19th of *May*.

*Tho' the Crime of* Delay *was as roundly aſſerted, and as loudly clamoured againſt, as any other Part of* MR. BYNG's *Conduct, during the Expedition; yet his Innocence in this Point, is now eſtabliſhed by an Authority, which, I believe, no one will ſuſpect of any partial Impreſſions* in favour *of the Admiral.*

## II.

*Unanimouſly.*—It appears, that upon the Fleet's getting Sight of *Minorca*, on the Morning of the 19th of *May*, the Admiral detached three Frigates (the *Phœnix*, *Cheſterfield*, and *Dolphin*) a-head, with Orders to Captain *Hervey* of the *Phœnix*, to endeavour to land a Letter from the Admiral to Lieutenant-General *Blakeney*, and to make Obſervations of what Batteries or Forts the Enemy might be poſſeſſed of along the Shore.

## III.

*Unanimouſly.* — It appears, that thoſe Frigates were got a-head of the Fleet, and in Shore; and the *Phœnix* cloſe to the Lair of *Mahon*; and were

endeavouring to execute thoſe Orders, till they were called off, between Eleven and Twelve o' Clock, by Signal from the Admiral, upon Diſcovery of the *French* Fleet in the South-Eaſt Quarter.

IV.

*Unanimouſly.* — It appears, that the Fleet ſtood towards the Enemy the remaining Part of the Day, with Calms and little Winds, till they tacked in the Evening.

V.

*Unanimouſly.* — The COURT are of OPINION, that the Admiral proceeded properly, upon Diſcovery of the *French* Fleet, to ſtand towards them.

*Thus far the Admiral's Conduct is juſtified, even in the Opinion of the Court; yet, by the two following Articles, that Conduct, which before is pronounced proper, upon* the Whole, *is now to be deemed improper* in Part, *for*

VI.

*Unanimouſly.* — It appears, that Major-General *Stuart*, Lord *Effingham*, and Colonel *Cornwallis*, with about Thirty Officers, and ſome Recruits, amounting in the Whole to about 100, belonging to the different Regiments in Garriſon at St. *Philip*'s, were on board the Ships of the Squadron.

VII.

12 *Yeas for all the Officers*; 1 *for the General and Field Officers only.*

The COURT are of OPINION, that as ſo great a Number of Officers were on board the Fleet, belonging to the Garriſon of *St. Philip*'s,

*lip*'s, where they muſt neceſſarily be much wanted, the Admiral ought to have put them on board one of the Frigates he ſent a-head, in order to have been landed, if found practicable; and if not landed before he ſaw the *French* Fleet, he ought to have left the Frigate to have endeavoured to land them, notwithſtanding he did ſee the Enemy's Fleet.

*When the Fleet arrived off* Minorca, *were not ſeveral Ships diſperſed? and was not the Admiral obliged to proportion his Sail, in order to enable the Ships, fallen a-ſtern during the Night, to rejoin him?—Were not the Officers belonging to the Garriſon diſtributed throughout the different Ships of the Fleet; and could they be put on board any one of the Frigates at that Time, without ſome Hours Delay? —Would not this Delay have been inexcuſeable, when the whole Fleet was advancing with a freſh Gale of Wind, and fair for the Harbour?*

*But why were theſe Officers to be put on board the Frigate? What Circumſtance then rendered this extraordinary Precaution neceſſary?—Was the Enemy in Sight?—Was their Appearance at that preciſe Point of Time to be expected?—If not, was not the* Britiſh *Fleet then advancing towards the Caſtle, as well as the Frigates; and if the latter found a Communication practicable, might not the Officers have been embarked on board one of them, in a very ſhort Space of Time?—Could the Admiral, without the Letter he ſent to General* Blakeney *had been landed, poſſibly know that the Fate of the Garriſon depended on the inſtantaneous Diſembarkation of a few Officers?—Or, when the Enemy's Fleet appeared ſteering towards ours, and was known to be ſuperior to it, would not any Weakening of our Force have been a very injudicious, not to ſay a culpable, Meaſure; eſpecially as the Fleet was badly manned, and*

*ſickly?—Were not the Men belonging to the Frigates neceſſary; and were they not actually diſtributed to reinforce the Line of Battle Ships?—Was the Preſervation of a Frigate, and ſuch a Number of Officers of Rank, to claim no Part of the Admiral's Attention?—Would not his leaving them, (had any Accident happened) been held a kind of abandoning of them to the Enemy, who were then Maſters of the Harbour? And might he not then have been expoſed to that very Cenſure which he has now incurred for not doing it?—But, ſuppoſing the Judgment of the Court to be* right, *does it infer any thing more than that the Admiral's was* wrong?—*And yet, wrong as it may have been, it ſeems to have had its Abettors; ſince not a ſingle Witneſs examined, to this Part of Mr.* Byng's *Conduct, but has avowed the Rectitude of it; and who, as Officers of equal Rank, Knowledge, and Experience, together with the additional Advantage of being on the Spot, may be deemed no indifferent, if not altogether as infallible Judges as thoſe of the Court itſelf. Does not Mr.* Weſt *ſay*, that the Garriſon of *St. Philip*'s was to look on the *Engliſh* Fleet at that Time as its Protection, and that any Weakening the Force of that Protection would have been highly inexcuſeable?—*Does not Lord* Robert Bertie *give it as his Opinion*, That the 100 Officers and Recruits were of much more Service on board the Fleet, than they could have been in the Garriſon, *&c.?—As the Authority of Evidence appears to have had no Weight in forming this Opinion of the Court, it is to be preſumed that of Reaſon was adopted in its ſtead; yet by what Principles of it Mr.* Byng *can be ſaid*—Not to have done his utmoſt to relieve *St. Philip*'s Caſtle, *only becauſe he firſt endeavoured to deſtroy a Fleet deſtined to cover the Siege of it, is, I confeſs, to me ſomewhat inexplicable. This Reſolution therefore amounts to no*

*more*

*more than a mere Difference in Judgment between the Court and the Admiral, together with all his Officers, —and the Words of it*—If found practicable, *imply, that the Court were by no means ſatisfied, that the Landing of the inconſiderable Reinforcement then on board, actually was ſo.*

VIII.

*Unanimouſly.*—It appears, that from the Time of firſt ſeeing the *French* Fleet in the Morning of the 19th of *May*, till our Fleet weathered the *French* about Noon the 20th, the Admiral took proper Meaſures to gain and keep the Wind of the Enemy, and to form and cloſe the Line of Battle.

IX.

*Unanimouſly.*—It appears, that the Van of our Fleet upon the Starboard Tack, ſtretched beyond the Rear of the Enemy's Fleet; and that our whole Fleet then tacked all together, by Signal; the Enemy's Fleet lying at the ſame Time to Leeward, in a Line of Battle a-head, on the Larboard Tack, under their Topſails, with their Maintopſails ſquare.

X.

*Unanimouſly.*—It appears, that immediately after our Fleet was about upon the Larboard Tack, our Rear was conſiderably farther to Windward of the Enemy's Rear, than our Van was of their Van.

XI.

*Unanimouſly.*—The COURT are of OPINION, that when the *Britiſh* Fleet, on the Starboard Tack, were ſtretched a-breaſt, or about the Beam of the Enemy's Line, the Admiral ſhould have tacked the

the Fleet altogether, and immediately have conducted it on a direct Courſe for the Enemy; the Van ſteering for the Enemy's Van, the Rear for their Rear; each Ship for her oppoſite Ship in the Enemy's Line, and under ſuch a Sail as might have enabled the worſt ſailing Ship, under all her plain Sail, to preſerve her Station.

*As this Opinion is founded merely on a diſputable Point of Diſcipline, with regard to the Propriety of diſpoſing the Ships for the Attack, nothing criminal, at leaſt, can be infered from it, unleſs every critical Deviation from the Judgment of the Court is to be held a Proof of wilful Guilt, and liable to the ſevereſt Penalties of it——It ſeems the Admiral's pretended Error (for no harder Term can his moſt ſanguinary Oppoſers give it) conſiſts, 1ſt, In ſuffering the Van of our Fleet to ſtretch beyond the Rear of the Enemy's. 2dly, In not tacking when the two Fleets were a-breaſt of each other, and bearing right down on the Enemy. And, 3dly, In not making all ſuch Sail as would have enabled the worſt ſailing Ship (under all her plain Sail) to preſerve her Station.——How conſonant ſuch a Conduct may be to any new Syſtem of our modern Diſciplinarians, I will not pretend to ſay; but certain I am, that it is contrary to the Doctrine as well as Practice of every prudent, good, or great Officer I ever knew or have heard of; and indeed, who (tho' ever ſo little skilled in naval Knowledge) does not ſee the Propriety rather of approaching the Enemy with a Broadſide than with the Stem only towards them, as the latter muſt inevitably ſubject your Ships to be raked; and probably render them diſabled for Action before they can properly come into it.——Was not this even juſtified by the Event, in the very Engagement under Conſideration; ſince the* Intrepid, *from being thus indiſcreetly conduct-*

*ed*

*ed to Action, was disabled without being able to do her Antagonist any apparent Damage; to avoid this Inconvenience it was, that Mr.* Byng *very prudently stretched beyond the Enemy's Rear before he tacked, that he might, by a slanting Course, place his Ships against those they were to engage with their Broadsides towards them, and which could only be effected by this Method; a Method the more unexceptionable as the* French *Fleet was laying to receive him.—Nor is this new Doctrine of engaging the Enemy, under a Croud of Sail, to be justified either by Authority or Experience. It was the invariable Rule of the brave* Russell, *and the able* Rooke, *never to hazard a Disorder on the Brink of Action, by crouding Sail, and making the Attack with Precipitation; especially when, as in this Case, the Enemy waited the Attack, and there was no Reason to apprehend they would avoid an Engagement.—Upon the Whole, whether the Admiral's System, or that of the Court, is most agreeable to true naval Discipline, I shall not be arrogant enough to determine; but will venture to pronounce, that neither has any Claim, that I know of, to Infallibility, for the Sanctification of their Doctrine. If Experience indeed may be thought of any Avail in this Case, the Advantage must be allowed the Admiral, as none of his Judges, that I ever heard of, have this to plead in Support of their superior Abilities for the proper Conduct of a Fleet.*

XII.

*Unanimously.*—It appears, that soon after the Fleet was upon the Larboard Tack, the Admiral made Signals for leading two Points to Starboard, which brought the Wind upon or abaft the Beam, and the Ships continued that Course, nearly a-head of each other, till the Admiral made the Signal for Battle.

XIII.

XIII.

*Unanimouſly.*—It appears, that the Admiral made the Signal for Battle, about twenty Minutes after Two o'Clock.

XIV.

*Unanimouſly.* — It appears, that at the Time the Signal was made for Battle, the *French* Fleet were ſtill lying to Leeward, with their Maintopſails ſquare, as before-mentioned; and that our Van was conſiderably nearer to their Van, than our Rear was to their Rear.

XV.

*Unanimouſly.* — It appears, that upon the Signal being made for Battle, the Ships of our Van Diviſion bore down properly for the Ships oppoſed to them in the Enemy's Line, and engaged them, till the five headmoſt Ships of the Enemy went away to Leeward, out of Gun ſhot.

XVI.

*Unanimouſly.* — It appears, that the ſternmoſt Ship of our Van Diviſion, the *Intrepid*, having hauled up, and engaged about ten Minutes, or a Quarter of an Hour, loſt her Foretopmaſt a little before Three o'Clock.

XVII.

*Unanimouſly.* — It appears, that the *Revenge*, the headmoſt Ship of the Rear Diviſion bore down (after the Ships of the Van bore down) for the Ship oppoſed to her in the Enemy's Line; and that ſhe brought up

up upon the Weather Quarter of the *Intrepid*, upon the *Intrepid*'s Foretopmaſt going away; and that ſhe quickly afterwards, upon the *Intrepid*'s ſetting her Foreſail, bore down under the *Intrepid*'s Lee Quarter, and brought up there.

## XVIII.

*Unanimouſly.* — It appears, that upon the Signal being made for Battle, and the Van putting before the Wind, the Admiral, in the *Ramillies*, edged away ſome Points; and the *Trident* and *Princeſs Louiſa* thereby becoming to Windward of him, the Admiral thereupon haled up his Foreſail, backed his Mizentopſail, and endeavoured to back his Maintopſail, to allow of their getting into their Stations, and continued in that Situation for five, ſix, or ſeven Minutes.

## XIX.

*Unanimouſly.*--It is the OPINION of the COURT, that the Admiral, after the Signal was made for Battle, ſeparated the Rear from the Van Diviſion, and retarded the Rear Diviſion of the *Britiſh* Fleet from cloſing with and engaging the Enemy, by his ſhortning Sail, by haling up his Foreſail, backing his Mizentopſail, and backing or attempting to back his Maintopſail, in order that the *Trident* and *Princeſs Louiſa* might get ahead again of the *Ramillies*.

## XX.

*Unanimouſly.*--It is the OPINION of the COURT, that inſtead of ſhortening Sail, the Admiral ought to have made the *Trident*'s and *Princeſs Louiſa*'s

Signals to make more Sail ; and that he ought alſo to have ſet ſo much Sail himſelf, as would have enabled the *Culloden* (the worſt ſailing Ship in his Diviſion) to have kept her Station with all her plain Sail ſet, in order to have got down, with as much Expedition as poſſible, to the Enemy, and thereby have properly ſupported the Van Diviſion.

*I believe this is the firſt Inſtance of ſo fatal a Streſs laid upon ſo inconſiderable a Space of Time: But would not the Candour and Ingenuity of this Opinion have appeared much more conſpicuous, had the Diſadvantages accruing from this pretended Error of the Admiral's been more particularly ſpecified,* viz. How far, *by this means, the Rear of our Fleet was ſeparated from the Van*——*and* How long *retarded from cloſing with, and engaging, the Enemy.—If our Fleet went (as appears by the Evidence it did) about two Knots and a half or three Knots an Hour, could this heinous Shortening of Sail (as the Ship was ſtill under Way notwithſtanding) be ſuppoſed to have leſſened her Way much more than a Cable's Length, and as the Enemy's Ships were lying to receive the Attack, could any Inconvenience attend ſo momentary an Interruption? But ſuppoſing the Admiral had made the Signal mentioned in the Reſolution, and had kept on, muſt not he, conſidering the Shortneſs of the Run, have nearly cloſed the* Revenge, *during the Time the* Louiſa *and* Trident *were making more Sail; and how then were theſe Ships to get into their Stations, between the* Revenge *and the Admiral, without his then backing for them, and that for a much longer Time than was at firſt neceſſary?—If He had not done this, what was to become of theſe two Ships, or was he to have attacked the Enemy's Line without them? but ſurely the Court muſt have miſtaken both the Time*

*as*

*as well as Cauſe of this Separation and Retardment; ſince, from the whole Scope of Evidence, it appears both were occaſioned ſome time after, from the* Revenge *bringing too, by the* Intrepid, *inſtead of proceeding a-head and cloſing the Line, agreeable to the 24th Article of additional fighting Inſtructions, and agreeable to the Signal for the Line of Battle a-head, then flying, and which Impediment the Court, by the 25th Reſolution, admits of—Tho' this is not the only one, yet, I muſt confeſs, it appears to me a ſtriking Inſtance, how little Authority Evidence had in the Formation of the Court's Opinion; ſince this damnatory Reſolution is founded on the Teſtimony of a ſingle Witneſs only, when twenty others have abſolutely ſworn, that the Admiral never once ſhortned Sail from the Time he bore away, till he was ſtopped by the Ships a-head of him backing and falling on his Bow. Surely when the Law of Evidence is diſregarded, Judgment muſt become arbitrary, and Juſtice precarious.—But, as a Seaman, I cannot avoid making one Obſervation more on this extraordinary Article of Mr.* Byng's *Condemnation—If this ſuppoſed Separation was made on this Occaſion, between our Van and Rear, who was properly chargeable with it? —Not the Admiral ſurely.—Ought the Admiral to regulate his Motions by thoſe of each particular Ship, or each particular Ship to regulate its Motions by thoſe of the Admiral? — When a Signal therefore for a Line, at half a Cable's Length diſtance, is flying, can an improper Separation be occaſioned by any other means than by thoſe Ships, either a-head or a-ſtern of the Admiral, not keeping the due Diſtance preſcribed by the Signal? Hence, muſt not ſuch a Separation be imputable only to the Ships in the Van, which ought, according to all the Rules of Diſcipline, to have preſerved the Diſtance appointed? — Indeed, this is the firſt Time I ever heard an Admiral accuſed of being out of his Station in the*

*Line; for, as his Ship is ſuppoſed to be the Center, from which all Situation takes Place, the reſt of the Ships may offend in Point of Station, with reſpect to the Admiral, but the Admiral never with reſpect to the reſt of the Ships.—But it ſeems the Admiral ſhould have made the* Trident's *and* Princeſs Louiſa's *Signals to make more Sail; yet, as this Interruption laſted only about ſix Minutes, would not the very making of theſe Signals have taken up near that Time, and then thoſe Ships would have that to do, which, by the Admiral's Method, was already done. — Again, the Admiral ſhould have ſet more Sail himſelf.—What additional Sail could he have carried?—Topgallant-ſails, you will ſay. But were theſe ever held proper Sails, for an Admiral to carry, and to engage an Enemy under? Or what Reaſon appeared to make them neceſſary, when the Enemy, ſuperior in Force, and in perfect good Order, were waiting the Attack?*

## XXI.

*Unanimouſly.*—It appears, that the Admiral after ſhortening Sail, as before-mentioned, again ſet his Foreſail and filled his Topſails, and ſteered, with the Wind abaft the Beam, a ſlanting Courſe towards the Enemy, under that Sail, untill about 3 o'Clock; when the People in the *Ramillies* began to fire without Orders, at too great a Diſtance for engaging; but the Firing was continued by the Admiral's Directions.

## XXII.

*Unanimouſly.*—It appears, that ſome little time before this Firing began in the *Ramillies*, the *Princeſs Louiſa* was ſeen from the *Ramillies*, flung up in the Wind with her Topſails ſhaking, and the *Trident*

*Trident* paſſing her to Leeward, the *Trident* being then a little upon the Weather Bow of the *Ramillies*; and that the *Revenge* had been alſo ſeen to bring to under the *Intrepid*'s Lee-Quarter.

XXIII.

*Unanimouſly.*—It appears, that when the Firing had been continued a little while in the *Ramillies*, an Alarm was given of a Ship being cloſe under her Lee-Bow, imagined to be one of our Ships, and which proved to be the *Trident*; that, upon this Alarm, the Admiral immediately ordered the Helm to be put a Lee, the Foreſail haled up, and the Topſails to be backed, and Firing to ceaſe, till the Men ſhould ſee *French* Colours, and made the Signal for the Fleet to brace to, the Rear to brace to firſt; in order that the Ships a-ſtern might not run on board him; but to prevent this Signal taking effect upon the Ships ahead, he ordered it to be haled down in a very few Minutes, and cauſed the Signal to be hoiſted for the Fleet to fill and ſtand on, the Van to fill firſt.

XXIV.

*Unanimouſly.*—It appears that the *Princeſs Louiſa* was alſo ſeen, about the ſame time, with her Maintopſail ſhivering, or a-back, upon the Weather Bow of the *Ramillies*.

XXV.

*Unanimouſly.*—The COURT are of OPINION, that while the *Ramillies* was firing, in going down, the *Trident*, and Ships immediately a-head of the *Ramillies*, proved an Impediment to the *Ramillies* continuing to go down.

XXVI.

## XXVI.

*Unanimouſly.*—The COURT are of OPINION, that the Admiral acted wrong, in directing the Firing of the *Ramillies* to be continued before he had placed her at a proper Diſtance from the Enemy; as he, thereby, not only threw away Shot uſeleſsly, but occaſioned a Smoke, which prevented his ſeeing the Motions of the Enemy, and the Poſition of the Ships immediately a-head of the *Ramillies*.

*Here, it ſeems, is an allowed Impediment to the* Ramillies's *continuing to go down; and might not this be the Cauſe of that Separation and Retardment before-mentioned? Nay, if the Authority of Evidence may be allowed to have any Weight againſt that of the Court, this actually was the Cauſe, and only Cauſe of them: Can then the Admiral be blameable for the Conſequences of an Accident which did not depend upon him, or could poſſibly be foreſeen or prevented by him?——As to the Admiral's permitting the Fire of the* Ramillies *to be continued, ſurely no Seaman, acquainted with Action, can heſitate to pronounce it a prudent Meaſure under the Circumſtances which then exiſted.——Was not the Admiral within half a Mile of the Enemy, when he permitted the Fire to be continued? Though this may not be allowed to be within Point-blank, has it not, in many famous Sea-Actions, been looked upon as a proper Diſtance for Engaging, and called half Gun-ſhot?—Might not the Smoke diſtreſs the Enemy in taking a deliberate and ſure Aim at the* Ramillies *as ſhe was bearing down; and, by that Means, prevent her being diſabled before ſhe could get into cloſe Action, which it appears the Admiral declared to be his Intention?—As the Ship was then bearing down all the Time, did not ſhe every Minute near her Opponent, and as the Shot of*

*of the Enemy had for ſome Time reached, and paſſed over, the* Ramillies, *might not her Return of it damage the Enemy, eſpecially in her Maſts, Yards, and Rigging? Nay, did not this very Continuation of the Fire, criminal as it is cenſured to be, drive one of the* French *Ships out of the Line, after having brought down her Topſail-Yard? So that the only Damage, apparently done the Enemy's whole Fleet, was the Effect of this Fire, which by the Court is pronounced* wrong, *and to have thrown away his Majeſty's Shot* uſeleſsly. *—As to the Smoke of the* Ramillies' *preventing the Admiral's ſeeing the Poſition of the Ships immediately a-head of him; this is reaſoning from the Event, no very fair Way of forming Concluſions.—Had thoſe Ships kept their proper Stations, I preſume there would have been no Occaſion for the Admiral's ſo particular Obſervance of them: That they would fall out of their Stations, nothing leſs than Preſcience could have enabled him to know; ſo that the Admiral ſhould not have continued the Fire of the* Ramillies, *becauſe the Smoke might poſſibly prevent his ſeeing an Accident which he could not poſſibly expect would happen. Excellent Logic!—Notable Cauſe of Crimination!*

## XXVII.

*Unanimouſly.*—It appears, that ſhortly after the haling up of the Foreſail, and backing the Topſails, all Firing ceaſed on board the *Ramillies.*

## XXVIII.

*Unanimouſly.*—It appears, that when the Smoke cleared up, upon the *Ramillies* ceaſing to fire, the Center and Rear of the *French* Fleet had filled their Maintopſails, and ſet their Foreſails.

XXIX.

XXIX.

*Unanimouſly.* — It appears, that the *French* Center and Rear ſtood on, and, as they came near the three then ſternmoſt Ships of our Van, gave them their Fire; that ſome of their Shot fell ſhort, and ſome did the *Defiance* Damage; and then the *French* edged away to join their own Van to Leeward.

XXX.

*Unanimouſly.* — It appears, that from the Time the Admiral firſt haled up his Foreſail, and backed his Topſails, to get clear of the *Trident*, to the Time of his filling his Topſails, and ſetting his Foreſail again, was about twenty Minutes.

XXXI.

*Unanimouſly* — It appears, that about the Time of the Admiral's filling, he made the Signal for the Rear of the Fleet to make more Sail, and cloſe the Line; cauſed the *Princeſs Louiſa* and *Trident* to be hailed, to make ſail into their Stations; and then ſetting his Mainſail, Jibb and Stayſails, paſſed to Leeward of the *Intrepid*; ordered the *Deptford* to take the *Intrepid*'s Place in the Line, and the *Cheſterfield* to take Care of the *Intrepid*; and ſtanding on towards our Van, joined them a little after Five in the Evening.

XXXII.

*Unanimouſly.* — The COURT are of OPINION, that after the Ships, which had received Damage in the Action, were as much refitted as Circumſtances would permit, the Admiral ought to have returned with the Squadron off *St. Philip*'s; and have endea-

endeavoured to open a Communication with that Caſtle; and to have uſed every Means in his Power for its Relief, before he returned to *Gibraltar*.

*As the Subject of this Opinion is merely Matter of Judgment, it may not be improper to oppoſe Authority to Authority, and if, as has been before obſerved, the Commiſſion, that conſtitutes the Court, is not ſuppoſed to confer Infallibility on the Members of it, it may ſtill remain doubtful at leaſt,—Whether the Admiral ought* (after the Ships, which had received Damage in the Action, were as much refitted as Circumſtances would permit) *to have returned with the Squadron off* St. Philip's; *but firſt, it may be aſked, how was he to get there?—Was not the* French *Fleet ſeen ſeveral Times lying between him and the Iſland?—Had that Fleet, to Appearance, ſuffered any Diminution in its Force?—Were not four Ships of ours rendered unfit for Action?—Would it then have been prudent, with the Remnant of our Ships, to have re-attacked an Enemy, which was ſuperior to the Whole?—Was it proper to have proceeded again into Action with the* Intrepid, *which was obliged to be towed, under Jury-maſts, to* Gibraltar?—*Was not the* Portland *likewiſe, when arrived at that Place, reported unfit for Service, and could not be hove down there?— But is the Admiral the only Perſon who differs with the Court in Opinion on this Occaſion, and is not his Judgment authorized by the unanimous Concurrence of every* Land *and* Sea Officer *conſulted upon it?—Were not theſe Gentlemen equally qualified with the Court, to judge of the Propriety of the Proceedings, and did not their being on the Spot rather give them the Advantage in this Point over Gentlemen in the* Harbour *of* Portſmouth? *— Does it not ſeem ſtrange, that all Mention of the* Council *of* War **, held*

* See Minutes of the Council of War, Appendix No. 3.

*on board the* Ramillies, *ſhould be ſo carefully avoided in the Reſolutions of the Court! Were not the Minutes of it read on the Trial, and by that Means become Part of the Proceedings?—Did the Court think itſelf in no Sort obliged to pay any Regard to the Contents of them? But how indeed is it to be expected they ſhould have any Weight, when it appears, that theſe Gentlemen have thought themſelves at Liberty to ſet up their own private Opinion, in Oppoſition to the Authority of the united Evidence of every individual Witneſs, examined upon Oath to this Particular.*

XXXIII.

*Unanimouſly.*—The COURT are of OPINION, that Admiral *Byng* did not do his utmoſt to relieve *St. Philip*'s Caſtle, in the Iſland of *Minorca*, then beſieged by the Forces of the *French* King.

XXXIV.

*Unanimouſly.*—The COURT are of OPINION, that Admiral *Byng*, during the Engagement between his Majeſty's Fleet, under his Command, and the Fleet of the *French* King on the 20th of *May* laſt, did not do his utmoſt to take, ſeize, and deſtroy the Ships of the *French* King, which it was his Duty to have engaged; and to aſſiſt ſuch of his Majeſty's Ships, as were engaged in Fight with the *French* Ships, which it was his Duty to have aſſiſted.

XXXV.

*Unanimouſly.*—It appears, by the Evidence of Lord *Robert Bertie*, Lieutenant Colonel *Smith*, Capt. *Gardiner*, and by other Officers of the Ship, who were near the Perſon of the Admiral, that they did not perceive any Backwardneſs in the Admiral, dur-

ing

ing the Action; or any Marks of Fear or Confuſion, either from his Countenance or Behaviour; but that he ſeemed to give his Orders coolly and diſtinctly, and did not ſeem wanting in perſonal Courage.

XXXVI.

*Unanimouſly Reſolved*, — That the Admiral appears to fall under the following Part of the twelfth Article of the Articles of War; to wit, " or ſhall " not do his utmoſt to take, or deſtroy, every Ship " which it ſhall be his Duty to engage, and to aſſiſt " and relieve all and every of his Majeſty's Ships, " which it ſhall be his Duty to aſſiſt and relieve."

XXXVII.

*Unanimouſly Reſolved*, — As that Article poſitively preſcribes Death, without any Alternative left to the Diſcretion of the Court, under any Variation of Circumſtances, that he be adjudged to be ſhot to Death, at ſuch Time, and on board ſuch Ship, as the Lords Commiſſioners of the Admiralty ſhall direct: But as it appears by the Evidence of Lord *Robert Bertie*, Lieutenant Colonel *Smith*, Captain *Gardiner*, and other Officers of the Ship, who were near the Perſon of the Admiral, that they did not perceive any Backwardneſs in him, during the Action, or any Marks of Fear, or Confuſion, either from his Countenance or Behaviour; but that he ſeemed to give his Orders coolly and diſtinctly, and did not ſeem wanting in perſonal Courage; and from other Circumſtances, the Court do not believe that his Miſconduct aroſe either from Cowardice or Diſaffection; and do therefore unanimouſly think it their Duty, moſt earneſtly to recommend him as a proper Object of Mercy.

*As the whole Subſtance of theſe Reſolutions depends on the following Words, viz.* or ſhall not do his utmoſt, *it may be ſufficient to obſerve, that if ſo fatal a Streſs is to be laid on this indeterminate Expreſſion, as to inforce a Sentence againſt both* Conſcience *and* Juſtice, *what Officer, let his Conduct be ever ſo unexceptionable, can hope to eſcape Capital Puniſhment, unleſs he is poſſeſſed of the comfortable Certainty, that the Opinion of his Judges, in point of Diſcipline, will fortunately coincide exactly with his own?—Is any other Crime to be collected from the whole of theſe Reſolutions, than that Mr.* Byng *and his Judges* thought differently?—*He may, if you believe them, have been* injudicious; *he cannot have been* criminal; *and tho' the Sentence* * *condemns to the* Penalty, *I will venture to ſay, at the ſame time, it acquits of the* Guilt; *and indeed ſeems to amount to little more than a Remonſtrance againſt the* Severity *(not to ſay Abſurdity) of the* Law, *or a Declaration of the Court's* Inability *to interpret* it.

Let us now ſum up the Total of Mr. *Byng*'s Offences, as imputed to him by theſe Reſolutions; and they will appear as follows:

### Resolution VII.

That the Admiral ought to have embarked the Officers belonging to the Garriſon on board the Frigate he ſent a-head, and, on Sight of the *French* Fleet, to have left the Frigate to endeavour to land them.

* See the Sentence and Letter, Appendix No. 1, 2.

XI.

That the Admiral ſhould not have ſtretched beyond the Enemy's Rear; but, when upon their Beam, to have tacked, and bore right down.

XIX.

That the Admiral ſhould not have backed, to let the *Trident* and *Louiſa* get into their Stations.

XXVI.

That the Admiral acted wrong in ordering the Fire of the *Ramillies* to be continued.

XXXII.

That the Admiral, after refitting his Ships as well as he could, ſhould have returned off *St. Philip*'s, and endeavoured to have opened a Communication with it.

Though a particular and, I flatter myſelf, a ſatisfactory Refutation has been offered to each of theſe Articles of Condemnation, yet even ſuppoſing them to ſtand in full Force againſt the Admiral, can any thing be reaſonably inferred from them to his Prejudice, beyond the pardonable Frailty of human Judgment?— Where is the *Cowardice*, *Negligence*, and *Diſaffection*, which the People have been tutored to *demand*, and the Law has been ſaid to *denounce*

*nounce* Death for?——If theſe are the penal Words contained in the Twelfth Article of War, let us ask,—Is not Mr. *Byng*, by his Sentence, declared innocent of Cowardice?—Yes.—Is he not declared innocent of Diſaffection?—Yes.—Is he pronounced guilty of Negligence?—No.—How, then, *Gentlemen* can with any Conſiſtence complain, that the *Severity* of this deathful Article (one penal Word of which they have not applied to the Priſoner in their Sentence) could oblige them, againſt their *Conſciences*, to inflict the Penalty of it, I muſt leave to be explained by a Logic peculiar to ſo diſtinguiſhing a Tribunal.

If the Word *Negligence* is not expreſſed in the Reſolutions it muſt either be implied, or not implied in them: if the former, how does the *Sentence* of the *Court* ſquare with the *Conduct* of the *Admiral?* if the latter, how does the *Conduct* of the *Admiral* ſquare with the *Sentence* of the *Court?*——But it ſeems, thoſe magical Characters of the *Law*, SHALL NOT DO HIS UTMOST, were, what puzzled the *Equity* of the Martial Bench; yet ſhall Words, which of themſelves are vague and *indeterminate*, be thought ſufficient to *determine* the Death of a Subject?——Tho' the Admiral might *not do his utmoſt*, according to the *Court*'s Idea, of Prudence and Diſcipline, he might ſtill *do his utmoſt*, according to his *own* Ideas of them; and, ſuppoſing the latter to be the Caſe, is it conſiſtent with Juſtice,

tice, that he ſhould be puniſhed for *not thinking* like his Judges ?—Theſe Words therefore can only criminate, as they relate to *willful Omiſſion*, a Guilt not even pretended by the Sentence of the Court, or, I will venture to ſay, diſcoverable in any Part of the Conduct of the Admiral.

Should, then, this UNFORTUNATE GENTLEMAN experience the laſt Rigour of his Fate, let him ſtill have the Conſolation to think, that *Ignominy* is not always the Conſequence of *Puniſhment* ; and, what is almoſt ſingular, that his *Sentence* on his *Monument* would afford a *Record* of his *Innocence* ; and only ſerve to furniſh a Trophy to his Honour, while Poſterity will ſcarcely be able to conceive how a COMMANDER

*Condemned*, though not *Convicted*,

*Juſtified*, yet not *Acquitted*,

Freed from the *Guilt*, yet, doom'd to the *Penalty*,

Of COWARDICE and DISAFFECTION ;

Should,

Againſt the *Conſcience* of his Judges,

Fall a VICTIM to ſo

PARADOXICAL a SENTENCE.

APPEN-

# APPENDIX.

## No. I.

*At a Court Martial assembled on board His Majesty's Ship the St.* George, *in* Portsmouth *Harbour, upon the 28th of* December, 1756; *and held every Day afterwards,* Sundays *excepted, till the 27th of* January, 1757, *inclusive.*

PRESENT.

*Thomas Smith*, Esq; Vice Ad. of the Red, President.
*Francis Holburne*, Esq; Rear Ad. of the Red.
*Harry Norris*, Esq; Rear Ad. of the White.
*Thomas Brodrick*, Esq; Rear Ad. of the Blue.

Capt. *Charles Holmes.*
*William Boys.*
*John Simcoe.*
*John Bentley.*
*Peter Dennis.*
Capt. *Francis Geary,*
*John Moore.*
*James Douglas.*
Hon. *Augustus Keppel.*

THE Court, pursuant to an Order from the Lords Commissioners of the Admiralty, to Vice Admiral *Smith*, dated the 14th of *December*, 1756, proceeded to enquire into the Conduct of the Honorable *John Byng*, Admiral of the Blue Squadron of His Majesty's Fleet, and to try him upon a Charge, that during the Engagement between His Majesty's Fleet under his Command, and the Fleet of the *French* King, on the 20th of *May* last, he did withdraw or keep back, and did not do his utmost to take, seize and destroy the Ships of the *French* King, which it was his Duty to have engaged, and to assist such of His Majesty's Ships as were engaged

engaged in Fight with the *French* Ships, which it was his Duty to have aſſiſted; and for that he did not do his utmoſt to relieve St. *Philip*'s Caſtle, in His Majeſty's Iſland of *Minorca*, then beſieged by the Forces of the *French* King; but acted contrary to, and in Breach of His Majeſty's Command: And having heard the Evidence, and the Priſoner's Defence, and very maturely and thoroughly conſidered the ſame; they are unanimouſly of Opinion, That he did not do his utmoſt to relieve St. *Philip*'s Caſtle; and alſo, that during the Engagement between His Majeſty's Fleet under his Command, and the Fleet of the *French* King, on the 20th of *May* laſt, he did not do his utmoſt to take, ſeize, and deſtroy the Ships of the *French* King, which it was his Duty to have engaged, and to aſſiſt ſuch of his Majeſty's Ships as were engaged in Fight with the *French* Ships, which it was his Duty to have aſſiſted: And do therefore unanimouſly agree, that he falls under Part of the 12th Article of an Act of Parliament of the Twenty Second Year of His preſent Majeſty, *For amending, explaining, and reducing into one Act of Parliament, the Laws relating to the Government of His Majeſty's Ships, Veſſels, and Forces by Sea:* And as that Article poſitively preſcribes Death, without any Alternative left to the Diſcretion of the Court, under any Variation of Circumſtances; the Court do therefore hereby unanimouſly adjudge the ſaid Admiral *John Byng*, to be ſhot to Death, at ſuch Time, and on board ſuch Ship, as the Lords Commiſſioners of the Admiralty ſhall direct. But as it appears by the Evidence of Lord *Robert Bertie*, Lieutenant Colonel *Smith*, Captain *Gardiner*, and other Officers of the Ship, who were near the Perſon of the Admiral; that they did not perceive any Backwardneſs in him during the Action, or any Marks of Fear or Confuſion, either from his

Countenance or Behaviour; but that he ſeemed to give his Orders cooly and diſtinctly, and did not ſeem wanting in perſonal Courage; and from other Circumſtances, the Court do not believe that his Miſconduct aroſe either from Cowardice or Diſaffection, and do therefore unanimouſly think it their Duty, moſt earneſtly to recommend him as a proper Object of Mercy.

THOS. SMITH.
FRAS. HOLBURNE.
H. NORRIS.
THOS. BRODRICK.
CHAS. HOLMES.
FRAS. GEARY.
W. BOYS.
JNO. MOORE.
J. SIMCOE.
JAMES DOUGLAS.
J. BENTLEY.
A. KEPPEL.
PET. DENIS.

CHARLES FEARNE,
*Judge Advocate.*

## No. II.

*To the Right Honorable the Lords Commiſſioners for executing the Office of Lord High Admiral of* Great Britain, *&c.*

WE the underwritten, the Preſident and Members of the Court Martial, aſſembled for the Tryal of Admiral *Byng*, believe it unneceſſary to inform your Lordſhips, that in the whole Courſe of of this long Tryal, we have done our utmoſt Endeavours

deavours to come at Truths, and to do the ſtricteſt Juſtice to our Country and the Priſoner: But we cannot help laying the Diſtreſſes of our Minds before your Lordſhips, on this Occaſion, in finding ourſelves under a Neceſſity of condemning a Man to Death, from the great Severity of the 12th Article of War, Part of which he falls under, and which admits of no Mitigation, even if the Crime ſhould be committed by an Error in Judgment only; and therefore, for our own Conſciences ſakes, as well as in Juſtice to the Priſoner, we pray your Lordſhips, in the moſt earneſt Manner, to recommend him to His Majeſty's Clemency.

*We are, my Lords, your Lordſhips*

*moſt obedient and moſt*

*humble Servants,*

*St. George*, in *Portſmouth Harbour*, Jan. 27, 1757.

THO. SMITH.
FRAS. HOLBURN.
H. NORRIS.
THOS. BRODRICK.
CHAS. HOLMES.
FRAS. GEARY.
W. BOYS.
JNO. MOORE.
J. SIMCOE.
JAMES DOUGLAS.
J. BENTLEY.
A. KEPPEL.
PET. DENNIS.

# N° III.

*At a Council of War assembled and held on board His Majesty's Ship* Ramillies, *at Sea, on* Monday, *the 24th of* May, 1756.

## PRESENT.

The Honorable *John Byng*, Esq; Admiral of the Blue.
Major General *Stuart.*
*Temple West*, Esq; Rear Admiral of the Red.
Captain *Henry Ward.*
Captain *Phil. Durell.*
Honorable *Edward Cornwallis.*
Captain *James Young.*
Captain *Charles Catford.*
Captain *Frederick Cornwall.*
Honorable *George Edgcumbe.*
Captain *Will. Parry.*
Captain *John Amherst.*
Captain *Arthur Gardiner.*
Right Honorable Earl of *Effingham.*
Honorable *Aug. John Hervey.*
Captain *William Lloyd.*
Right Honorable Lord *Robert Bertie.*

HAVING laid before the Council of War the Opinion of the Engineers in Regard to throwing in Succours in the Castle of St. *Philip*'s; the Result of a Council of War held by General *Fowke* at *Gibraltar*, with Regard to embarking a Detachment on board the Fleet; likewise Admiral *Byng*'s Instructions

Inſtructions for his Proceedings in the *Mediterranean*; likewiſe the Order with Regard to the Diſpoſal of the Regiment of *Fuſiliers*, commanded by the Right Honorable Lord *Robert Bertie*; and the Defects of the Ships, which received Damage in Action with the *French* Squadron, the 20th Inſtant; as alſo having laid before the Council the State of the ſick and wounded Men on board the Ships of the Fleet, propoſed to the Council the following Queſtions, *viz.*

I. Whether an Attack upon the *French* Fleet gives any Proſpect of relieving *Minorca*. } *Unanimouſly* reſolved that it would not.

II. Whether, if there were no *French* Fleet cruiſing off *Minorca*, the *Engliſh* Fleet could raiſe the Siege? } *Unanimouſly* of Opinion that the Fleet could not.

III. Whether *Gibraltar* would not be in Danger by any Accident, that might befall this Fleet? } *Unanimouſly* agreed that it would be in Danger.

IV. Whether an Attack with our Fleet, in the preſent State of it, upon that of the *French*, will not endanger the Safety of *Gibraltar*, and expoſe the Trade of the *Mediterranean* to great Hazard? } *Unanimouſly* agreed that it would

V. Whether

V. Whether it is not moſt for His Majeſty's Service, that the Fleet ſhould immediately proceed for *Gibraltar?* — *We are unanimouſly* of Opinion that the Fleet ſhould immediately proceed for *Gibraltar.*

J. Byng.
Jas. Stuart.
Temple West.
Hy. Ward.
Phil. Durell.
Ed. Cornwallis.
James Young.
Chas. Catford.
Fredk. Cornwall.
Geo. Edgcumbe.
Wm. Parry.
John Amherst.
Arthur Gardiner.
Effingham.
A. Hervey.
Michl. Everitt.
Wm. Lloyd.
Robt. Bertie.

N. B. *This Council of War is taken no Notice of in the Reſolutions of the Court Martial.*

*FINIS.*